



National PROPANE GAS Association

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Attention: Docket Number RSPA-99-5013 (HM-229)

Dear Sir/Madam:

This letter presents the comments of the National Propane Gas Association (NPGA) on the Advance Notice of Proposed Rulemaking (ANPRM) soliciting comments on the merits of revising the current incident reporting requirements of the Hazardous Materials Regulations (HMR) and the Hazardous Materials Incident Report form (DOT Form F 5800.1).

NPGA is the national trade association of the LP-gas (principally propane) industry with a membership of about 3,500 companies, including 37 affiliated state and regional associations representing members in all 50 states. The industry is made up of 95% small businesses. Although the single largest group of NPGA members are retail marketers of propane gas, the membership includes propane producers, transporters and wholesalers, as well as manufacturers and distributors of associated equipment, containers and appliances.

General comments. NPGA is pleased that DOT is looking for ways in which to make the incident reporting requirements and Form F 5800.1 better. We believe that DOT has an opportunity in this rulemaking to reduce the burdens on the regulated community and improve the reliability of the database. DOT should not adopt any new requirement that would have the effect of increasing the complexity of the database. Rather, DOT should consider all proposals to streamline the reporting task, increase the objectivity of the data to be submitted, and eliminate unnecessary or subjective reporting categories.

NPGA believes that simplification of the reporting requirements to the maximum extent possible is essential. The propane industry operates 33,000 transports and bobtails¹ that make millions of deliveries each year. Many of these companies simply do not have the wherewithal to undertake time-consuming incident reporting tasks. Every step of added complexity increases the likelihood that inconsistencies in the data will appear or non-reporting will increase.

¹ This figure was generated during development of requirements for cargo tank motor vehicles in HM-225A.

NPGA's call for simplification and burden reduction is supported by the just-completed cargo tank negotiated rulemaking (HM-225A). The reg-neg committee's deliberations were supported in part by DOT's incident database, but it became apparent that the data had significant limitations. Entries were not always reported clearly and completely, and some confusing entries had to be reconciled. This very recent experience puts the needs for simplicity and objectivity into sharp relief.

In view of the limitations associated with incident reporting, it is important for DOT not to try to do more than the data can support. NPGA believes that the incident reporting program should be aimed at limited objectives, as is currently the case. The reports that come in to DOT can and should keep track of relatively significant incidents that occur in a general way – who, what, where, when, and how. To try to go deeper than this in an effort to perform more rigorous analysis will only be frustrated by inconsistent reporting and excessive regulatory burdens on respondents.

DOT needs to recognize that increased complexity of reporting will only exacerbate existing confusion over what sort of incidents need to be reported now. Section 17 1.16 requires that *any unintentional release* of a hazardous material must be reported. There is no lower threshold for reporting except in very narrow circumstances, none of which applies to propane. The fact that DOT rules define as reportable incidents such non-events as inadvertent opening of hose-end valves or pump seal leaks that release de minimis amounts of propane and have no consequences is unrealistic and excessive. Therefore, DOT should use the same criteria for filing reports under 17 1.16 as exist for filing reports under 17 1.1 5².

Response to DOT's questions. NPGA urges DOT to consider the following information responding to many of the specific questions asked in the ANPRM.

Q1. Should the hazardous materials incident reporting requirements be extended to persons other than carriers (such as freight forwarders, warehouse operators, consignees, etc.) ?

No. Doing so would increase the likelihood that confusion would exist over responsibility for reporting. Broadening the responsibility for reporting would increase the likelihood that more than one report of an incident might be made or where no one would make the report. DOT should retain the current responsibility for reporting with the carrier.

Q3. Currently, immediate notification is required for incidents where estimated carrier or other property damage exceeds \$50,000. Is this monetary reporting threshold reasonable? Should it be modified or eliminated? If modified, to what amount? Why?

NPGA does not believe that the \$50,000 damage threshold needs to be changed at this time. However, DOT should regularly revisit this figure to reflect the effects of inflation. Doing so will help ensure that propane marketers and other respondents are not subject in the future to a

² For the propane industry, reportable incidents under Section 17 1.15 are typically those in which (1) a person is killed; (2) a person receives injuries requiring his or her hospitalization; (3) estimated carrier or other property damage exceeds \$50,000; (4) an evacuation of the general public occurs lasting one or more hours; or (5) one or more major transportation arteries or facilities are closed or shut down for one hour or more.

hazmat version of “bracket creep”, which would artificially increase the number of major incidents where no such increase were in fact occurring.

Q8. Is the current regulatory language clear as to when a written incident report is required? If not, what changes should RSPA make?

No, the current regulatory language for written reporting is not clear. It is impractical to expect industry to comply with a requirement for *any unintentional release* to be reported. Indeed, evidence in the field shows that DOT enforcement personnel believe such “zero tolerance” reporting is unnecessary. At least one major propane marketer has undergone a recent DOT audit where DOT enforcement personnel approved of using the telephonic reporting criteria as a threshold for making written reports. NPGA would strongly urge DOT to formalize this acknowledgement of marketplace realities by replacing the “any intentional release” requirement with the reporting thresholds that exist in Section 17 1.15.

Q9. To provide a broader perspective for risk management in more critical hazardous material transportation situations, should additional information be collected through the incident reporting system to document successful performance and better gauge the integrity of packaging? For instance, should information be collected on certain highway accidents whether or not a hazardous material has been released?

NPGA strongly opposes collecting additional categories of data for risk management purposes for the propane industry. Propane is a commonly used fuel source for millions of American businesses, residences, and farms. In light of the fact that propane’s properties are well understood and its safety when handled properly is well recognized, NPGA would oppose categorizing propane delivery as a “more critical hazardous material transportation situation.” In addition, NPGA strongly opposes collection of data on incidents that do not involve the release of hazardous materials. This will only serve to clutter the database. DOT doesn’t need more data, it needs more useful data consistently reported.

Q12. Should RSPA develop an abbreviated incident report form for incidents of low severity?

No. As described above in the answer to question 8, NPGA believes that incidents of low severity should not need to be reported at all. RSPA should focus its data collection activities on incidents having consequences. Incidents with low or no severity have no place cluttering up the database.

Q13. Should DOT Form F 5800.1 be structured to more accurately describe the cause and manner of a packaging failure? How could this be done to better capture human causal factors?

Form F 5800.1 currently has an entire section devoted to describing the packaging failure, including the action contributing to the package failure, the object causing the failure, how the package failed, the area of the package that failed, and what failed on the package. NPGA does not know what more could be expected to be provided. With regard to human causal factors, NPGA believes that adding additional reporting categories such as those related to a driver’s fault in an incident will create disincentives to full and accurate reporting.

Q18. Should there be either separate sections on DOT Form F 5800.1 for reporting bulk and non-bulk packagings or a separate incident report form for these packagings?

DOT already has adequate information to identify bulk versus non-bulk shipments, and multiple categories in Section VIII allow for identification of actions contributing to packaging failure, how the packages failed, and where and what on the package failed. No new categories are needed. Moreover, in the propane industry, many companies serve their customers both in bulk and non-bulk packages. Requiring reporting on two separate forms would increase the reporting burden unnecessarily.

Q19. Should we require more specific incident location data, such as mile-post or street address, if available? How difficult would it be to obtain and report this information? What additional benefit would the information provide?

NPGA opposes cluttering up the forms and database with unnecessarily specific incident location data. Not only is greater specificity unnecessary, it would be prone to errors thereby undermining the credibility of the database as a whole.

Q22. Should better information on release duration be collected (for example, the length of time a vapor is dispersed)? How could this be done?

For propane, such information on the duration of a release for the vast majority of incidents, under DOT's current criteria of any unintentional release, would not be useful because they would likely be measured in seconds. Such a category adds to the complexity of the reporting exercise and would likely be vague estimates in any event.

Q25. Should reporting of information concerning duration of an evacuation be included on the incident report form ?

No. With regard to significant propane incidents, evacuations are one of the first and most effective response options. The question of how long to extend an evacuation is a subjective decision made on-the-spot by the incident commander, who may choose to extend the duration of the evacuation for any reason. However, the duration of the evacuation is not necessarily connected to the severity of the incident. For example, a train derailment on March 4, 1996 in Weyauwega, Wisconsin resulted in the evacuation of at least 1700 people for over a week. While the good news is that the evacuation successfully kept citizens out of harms way, many in the propane industry question whether the length of the evacuation was justified. The point here is not that evacuations should be kept to a minimum. Rather, it is that duration of an evacuation is not an objective measurement of the severity of an incident that should be in DOT's database.

31. Should access to incident data be available via the Internet? If only select data could be provided because of cost or technology considerations, what data would be most useful to you?

Incident data should not be made available via the Internet. The HMR are not intended for community right-to-know purposes. NPGA is very concerned that some or all of the

database could be taken out of context or otherwise mischaracterized to harm the industry and its members. EPA is currently engaged in a major policy debate over the community right-to-know provisions of the Clean Air Act Amendments of 1990. The Agency, Congress, industry, and the environmental community are in a pitched battle over whether and how to provide data obtained through the Risk Management Program (RMP) regulations to the public via the Internet. DOT should retain its database for much more limited purposes.

Q32. RSPA is considering optional electronic filing of incident reports by facsimile (fax), electronic mail, (e-mail), and Internet. Do you have recommendations concerning implementation of electronic filing? Are there other means of electronic filing that RSPA should consider?

NPGA supports DOT's effort to provide as many options for reporting as possible. This, combined with simplified reporting requirements and reduced reporting burdens, will increase the likelihood that data will be submitted correctly and on time. Companies should be allowed to decide on an individual basis the format in which to submit, taking into consideration internal company review and submittal policy.

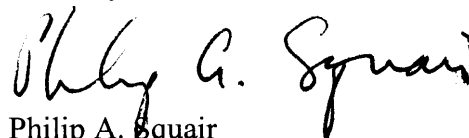
Q35. National Transportation Safety Board (NTSB) recommendation H-92-4 states that RSPA should "implement, in cooperation with the Federal Highway Administration, a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving DOT specification cargo tanks." How could RSPA, in cooperation with FHWA, improve the current incident reporting program to collect information identifying patterns of cargo tank equipment failures, including reporting of all accidents involving a DOT specification cargo tank, whether or not a release occurred?

NPGA strongly opposes reporting of incidents that do not involve unintentional releases of hazardous materials. Patterns of cargo tank equipment failures could better be identified if reporting requirements were modified to eliminate non-essential data categories and improve the focus on significant incidents.

Conclusion. NPGA appreciates this opportunity to provide comments on DOT's incident reporting program and Form F 5800.1. We believe that the database should be focused to include only those incidents that have consequences. This will simultaneously increase the usefulness of the data, reduce the reporting burdens on the private sector, and bring the requirements into conformity with marketplace realities.

Should you have questions or require further information, please don't hesitate to contact me anytime at 202-466-7200.

Sincerely,



Philip A. Squair
Director of Regulatory Affairs